

JAN 22 2009

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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

STEVEN DARRELL DIAMOND,

Defendant - Appellant.

No. 07-30492

D.C. No. CR-07-05087-FDB

MEMORANDUM<sup>\*</sup>

Appeal from the United States District Court  
for the Western District of Washington  
Franklin D. Burgess, District Judge, Presiding

Argued and Submitted December 9, 2008  
Seattle, Washington

Before: GOULD, TALLMAN, and CALLAHAN, Circuit Judges.

Steven Diamond appeals his 144-month sentence with three additional years of supervision resulting from his conviction for bank robbery in violation of 18 U.S.C. § 2113(a) and (f). Because the parties are familiar with the facts and procedural history we do not include them here, except as necessary to explain our

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<sup>\*</sup> This disposition is not appropriate for publication and is not precedent except as provided by 9th Cir. R. 36-3.

disposition. We have jurisdiction under 28 U.S.C. § 1291 and 18 U.S.C. § 3742(a) and we affirm.

Diamond contends that the district court erred in determining that his 1994 conviction for violating 18 U.S.C. § 111(a)(1) could serve as a predicate offense for a career offender enhancement under the U.S. Sentencing Guidelines Manual section 4B1.1. He argues further that the district court improperly applied the modified categorical approach to his conviction because the conviction was obtained through a plea of *nolo contendere* pursuant to *North Carolina v. Alford*, 400 U.S. 25 (1970).

This circuit recognizes that an *Alford* plea serves as the equivalent of a guilty plea for the purposes of determining whether the crime of conviction is a crime of violence. *See United States v. Guerrero-Velasquez*, 434 F.3d 1193, 1197–98 (9th Cir. 2006). We do not here decide whether assault with a deadly weapon on a federal officer in violation of 18 U.S.C. § 111 is categorically a crime of violence under U.S. Sentencing Guidelines Manual section 4B1.2(a) because the statute has been changed since Diamond’s 1994 conviction. Even so, our review of the judicially-noticeable documentation of the indictment and judgment of conviction, including the plea colloquy, is sufficient to establish that Diamond’s prior conviction satisfied all of the elements of a crime of violence. Therefore, the

district court properly determined, employing the modified categorical approach, that this conviction constitutes a crime of violence under U.S. Sentencing Guidelines Manual section 4B1.1. Using a vehicle to assault a deputy United States Marshal certainly qualifies for the enhancement on the 1994 record as we read it.

Because the sentence imposed was reasonable, we affirm. *See United States v. Mohamed*, 459 F.3d 979, 986 (9th Cir. 2006); *United States v. Plouffe*, 445 F.3d 1126, 1131 (9th Cir. 2006), *cert. denied*, 547 U.S. 1158 (2006).

AFFIRMED.